

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

USSN 10/669,424 8
Amendment under 37 CFR § 1.111 filed August 1, 2006

REMARKS

Applicants respectfully request reconsideration and allowance of this application in view of the amendments above and the following comments.

At the outset, Applicants note that they have made some purely editorial changes to claims 10 and 11, and have also added new claims 19 and 20, which are supported by claim 10. Applicants do not believe any of the amendments introduce new matter. An early notice to that effect is earnestly solicited.

Claims 10-16 were rejected under 35 USC § 103(a) as being obvious over WO 2004/024708. In response, Applicants respectfully submit that the WO is not competent prior art. It is neither a US patent, nor a US application published under 35 USC § 122(b), and consequently, does not qualify as prior art under 35 USC § 102(e). Rather, it qualifies as prior art, if at all, under 35 USC § 102(a), which would make it prior art as of its publication date of March 25, 2004. Since this date is already after the filing date of the instant application of September 24, 2003, WO 2004/024708 is not prior art against the present claims.

The Examiner may want to consider whether the application published as WO 2004/024708 has been nationalized and published under 35 USC § 122(b). Such an application would be applicable under 35 USC § 102(e) as of the international filing date of September 12, 2003, since the WO was published in English. However, the instant application claims priority from DE 10244811 filed on September 26, 2002, and, therefore, can antedate this reference upon the filing of a certified English translation of the DE.

Applicants note that the Examiner comments at the top of page 10 of the Office Action dated October 17, 2005, that "[e]ven if Certified English Translation will be presented, the effective *priority benefit* of WO 2004/024708 is 9/16/2002 prior to the benefit of the instant application." However, absent an interference, foreign priority of a reference is not a consideration. Thus, 35 USC §§ 102(a) and (b) make WO 2004/024708 prior art as of its publication date of March 25, 2004. 35 USC § 102(e) makes the national stage counterpart prior

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